

12R-49

**ADVERTISING AGREEMENT PERSHING AUDITORIUM
LINPEPCO**

ATTACHMENT "A"

This Agreement is entered into by and between SMG, a Pennsylvania general partnership acting as agent for the CITY OF LINCOLN, NEBRASKA for the management of the PERSHING MUNICIPAL AUDITORIUM (hereinafter referred to as "Pershing") and LINPEPCO Partnership, a Nebraska partnership (hereinafter referred to as "Advertiser") on this 12th day of February, 2012.

RECITALS

I.

Pershing presently owns and operates two exterior animated programmable electronic message systems and one interior animated programmable electronic message systems (the "Message Systems") and one center hung arena scoreboard (the "Scoreboard") at its auditorium facility located at 226 Centennial Mall South in Lincoln, Nebraska (the "Auditorium"). The two exterior message systems are located at 16th and M Streets and 15th and N Streets on the grounds of the Auditorium.

II.

Pershing is willing to grant certain advertising rights to the Advertiser and the Advertiser desires to acquire such advertising rights upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants contained herein, the parties do agree as follows:

1. **Grant of Basic Advertising Rights.** Pershing hereby grants the following advertising rights to ADVERTISER:

a. **Interior Advertising.** Advertiser shall have the right to display advertisements on one (1) of the fixed (3' x 6') advertising panels located on the Interior Message System in accordance with Exhibit B attached hereto and made part hereof.

In addition, ADVERTISER shall have the right to display advertisements on four (4) approximately (5' x 2') rear illuminated advertising panels on each side of the Scoreboard.

Additionally, Advertiser shall receive as a bonus a minimum of four (4) advertising messages per event to be displayed upon the interior Message System in accordance with specifications in Exhibit B during functions held at the Auditorium. Each of the Advertiser's messages thereon shall not be less than fifteen (15) seconds or more than twenty (20) seconds

in duration and will be equitably timed during events at the Auditorium with those of other advertisers, if any. For non-athletic events, Advertiser's messages on the interior Message System will be displayed at appropriate times (i.e. before curtain time, intermissions, etc.) which shall be mutually agreed upon by Advertiser and Pershing.

Advertiser's ad panels on the Scoreboard shall be illuminated during all events when it is necessary to use the Scoreboard.

b. Exterior Advertising. Advertiser shall have the right to display advertisements on four (4) fixed illuminated advertising panels measuring approximately (4'6" x 7') located on each of the two exterior Message Systems in accordance with Exhibit A attached hereto and made part hereof.

In addition, Advertiser shall receive promotional messages displayed upon each of the exterior Message Systems when the Message Systems are operational. (18 to 20 hours per day).

c. Advertiser shall bear the full fabrication and installation costs of its advertising material within its assigned mediums as stated in the Agreement. Pershing will provide labor for one (1) additional free installation for each medium per year during the term of this Agreement. Advertiser, at its own expense, shall be entitled to change the layout copy of the advertising panels from time to time during the period of this Agreement.

Advertiser agrees to repair, refurbish or replace said advertising displays whenever, in the reasonable opinion of Pershing, same becomes necessary, provided that Advertiser shall not be liable for any damage to the Message Systems or Scoreboard caused by any third party's actions to repair, refurbish or replace said advertising displays. Advertiser shall have the right to change the advertising copy on its advertisements at its expense whenever Advertiser deems necessary.

d. Pershing reserves the right to sell advertising rights on the Message Systems, the Scoreboard, and elsewhere in and around the Auditorium to other advertisers that Pershing may determine are not competitors of Advertiser.

e. Advertiser shall provide Pershing with copy for the Message Systems at least seventy-two (72) hours prior to the time the material is to be displayed. Costs for any custom art work for the spot messages shall be the responsibility of Advertiser.

f. Advertisements displayed under the terms of this Agreement shall be solely related to the Advertiser or the Advertiser's products and services and professionally presented in a manner acceptable to Pershing. Pershing reserves the right to prohibit Advertiser from displaying material that in the sole opinion of Pershing may be offensive to those attending Pershing events or which violate the rules, regulations or statutes of the State of Nebraska regarding advertising content. All proposed advertising shall be approved by the City of Lincoln prior to display. Pershing will use its best efforts to grant approval within 72 hours.

g. The Message Systems will be operated at all public events held at the Auditorium. In addition, Advertiser's advertising panels will be fully illuminated at night events or at other times when the Message Systems are illuminated except when Pershing deems it to be inappropriate to the event being held for Advertiser's advertising panels to be illuminated. Advertiser shall have the right of access to its advertising panels at all reasonable times for the purpose of replacement or removal of the same or to modify, change or alter the advertising appearing thereon at Advertiser's costs and at its discretion. Pershing further agrees that for the entire term hereof, there will be no alteration of Advertiser's advertising on the Message Systems without Advertiser's consent in writing.

2. Term of Agreement; Right of First Refusal.

a. This Agreement will remain in effect for a term of ^{TWO PER} ~~three~~ (2) years commencing on April 1, 2012 and terminating on March 31, 2014; or if and when Pershing ceases operations because of the construction and opening of a new facility to replace Pershing or because of a decision by the City of Lincoln to cease operations at Pershing; whichever occurs first.

b. If Advertiser is not in default under this Agreement, the Advertiser shall have the right of first refusal to renew this Advertising Agreement upon the Message Systems or comparable replacement Message Systems for a term that shall be negotiated; provided Advertiser gives Pershing written notice of its election to renew at least ninety (90) days prior to the expiration date of the original term. The amount of the fee due during the extension period as well as the payment schedule shall be negotiated in good faith between the parties. In the event the Advertiser provides notice of an election to renew, but the parties fail to reach agreement on the fee for the extension period prior to the expiration of the original term, then Advertiser's rights hereunder shall thereupon terminate.

3. **Fees.** For the advertising and product availability rights described herein, Advertiser shall pay the City the sum of an annual fixed fee of twenty thousand dollars (\$20,000) Dollars a year for each year that this Agreement is in effect. Payment shall be due and payable within thirty (30) days of each invoice when billed in accordance with the following schedule:

Commissions – In addition to the Annual Fixed Fee, Advertiser will pay Pershing a commission of thirty percent (30%) of gross revenue earned from beverage sales to Pershing in excess of thirty thousand dollars (\$30,000). Such commission shall be limited to an additional annual payment of fifteen thousand dollars (\$15,000).

<u>Invoice Date</u>	<u>Amount</u>	<u>Due Date</u>
4/1/2012	\$20,000.00	5/1/2012
4/1/2013	\$20,000.00	5/1/2013

4. **Maintenance.** Pershing agrees to maintain the Message Systems and Scoreboard, at its own expense, during the term of this Agreement, including the cleaning of advertising panels and changing of lamps, and agrees to repair and replace all assemblies or components which fail during this period through normal use at no expense to Advertiser.

5. **Material Damage or Destruction of Display Equipment.** In the event of material damage to or destruction of the Message Systems or the Scoreboard from any cause, Pershing shall have the option of restoring and reconstructing the Message System or the Scoreboard or it may notify the Advertiser of its intention not to make such repairs or restoration and, in that event, Advertiser shall be entitled to a pro rata refund of fees paid up to the date of the occurrence of such material damage or destruction and this Agreement shall thereupon terminate.

6. **Product Availability; Additional Advertising Rights.** Advertiser shall have the right to further advertise and make available for sale Pepsi, diet Pepsi and such other carbonated and noncarbonated soft drink products of the Advertiser as may be agreed upon by the parties (collectively, the "Relevant Products" see addendum) for the entire term hereof as follows:

a. Advertisements displayed under the terms of this Agreement shall be of a reputable character and shall be of a reputable character and shall conform to recognized business standards. All proposed advertising shall be approved by Pershing prior to display, which approval shall not be unreasonably withheld.

b. Advertiser shall have the exclusive privilege of advertising soft drink products upon the Message Systems and Scoreboard. Pershing agrees that for the duration of this Agreement, it will not grant to anyone other than the Advertiser the right to advertise any other carbonated or noncarbonated soft drink products on the Message Systems and Scoreboard. This shall not preclude the Advertiser of advertising such products at the point of sale or in program materials. Pershing reserves the right to advertise events to be held by Pershing upon the Message System, including the commercial name of any sponsor for the event.

c. All equipment at permanent locations dispensing the Relevant Products will carry panels advertising one or more of such Relevant Products, which panels shall be clearly visible to the purchasing public. Where it is not possible at such locations to provide such trademark advertising visible to the public, Pershing will otherwise provide for the prominent display of such point-of-sale advertising in a manner and location acceptable to Advertiser. This shall not require Pershing to provide for such advertising at temporary setups for the sale of Relevant Products.

d. Pershing agrees that the Relevant Products, shall be the exclusive carbonated and noncarbonated soft drink products available for sale at all open outlets in the Auditorium wherever soft drink products are sold or dispensed. Pershing further agrees to provide Relevant Products exclusively at concession outlets in the Auditorium. Pershing further agrees that such products shall be prominently listed on the menu boards of all food and refreshment outlets in the Auditorium. Relevant Products of the Advertiser will be available in at least one (1) size of cups bearing approved advertising for Advertiser at all locations in the Auditorium where soft drink products are sold or dispensed. Advertiser shall have the right to advertise the fact that its products are available in the Auditorium.

e. If any Relevant Product is permanently discontinued at any time during the term of this Agreement from the open food and refreshment outlets in the Auditorium, and not replaced by another Relevant Product, Advertiser will have the option of removing its advertising from the Message Systems and Scoreboard and receiving a pro rata refund of any prepaid advertising fees.

f. Advertiser shall receive one free logo placement and link on the Pershing Center Web site home page.

7. **Indemnities.** Advertiser agrees to hold harmless, defend and indemnify Pershing and its employees and agents, against all actions, claims, demands and liability for libel, slander, illegal competition or trade practice, infringement of trademarks, trade names or titles, violation of privacy and infringement of copyrights and proprietary rights resulting from any advertising display sign or any advertising by Advertiser detailed in this Agreement.

8. **Force Majeure.** Neither party shall be responsible for events beyond its reasonable control, such as acts of God, weather, casualties, government restrictions or unforeseen commercial delays. Any such event occurring after the term of this Agreement begins which materially reduces the availability to Advertiser of its advertising rights hereunder for a period of longer than one month shall give rise to an equivalent extension at no additional cost to Advertiser.

9. **Independent Contractor.** It is expressly agreed and understood that the payments made by Advertiser pursuant to this Agreement are consideration for advertising and promotional rights. The parties agree and understand that Pershing or affiliates is acting as an independent contractor, unrelated to Advertiser or any of its industries. It is further agreed and understood that Advertiser is not in partnership with Pershing and it is not entering a joint venture with Pershing. Nothing in this Agreement is intended to create a relationship or employer-employee, principal - agent, or master - servant, between Advertiser and Pershing.

Advertiser and Pershing expressly warrant to each other that neither party has or will, directly or indirectly, represent to any third party that Advertiser and Pershing have any business or legal relationship other than as set forth in this Agreement.

10. **Default.** Pershing reserves the right to terminate this Agreement in the event Advertiser defaults on payment or otherwise violates any other provision of the Agreement and fails to cure such default within ten (10) business days after written notice from Pershing, or otherwise defaults on any other provision hereof and fails to cure such default within thirty (30) business days after written notice from Pershing.

Upon such termination, all payments then due hereunder, but not paid and all other amounts due through the original terms of this Agreement shall without notice or demand, become immediately due and payable. Advertiser also expressly agrees to pay reasonable attorney fees and other reasonable costs incurred in the collection of any balance due under this Agreement. Pershing shall have the right to remove all of Advertiser's advertising medium from Message Systems and Scoreboard upon termination of this Agreement without further notice to Advertiser.

11. Trademarks, Trade Names, and Copyrightable Materials. Advertiser hereby grants to Pershing a limited right to use only for the purpose of this Agreement as agreed to by Advertiser, and only during the term and subject to the conditions of this Agreement, the mark of Advertiser and other marks of the Advertiser's company; Advertiser's trade name; and such use shall be under the strict control and supervision of Advertiser, and subject to Advertiser's prior approval.

12. Notices. All notices required hereunder shall be deemed duly given if sent by certified mail addressed as set forth below or to such other address as any of the parties shall advise the others in writing:

If to PERSHING: Pershing Auditorium
226 Centennial Mall South
Lincoln, NE 68508
Attention: Thomas Lorenz
Telephone: 402 441-8744

If to ADVERTISER: LINPEPCO Partnership
1901 Windhoek Drive
Lincoln, NE 68512
Attention: David Woll, V.P. Sales & Marketing
Telephone: 402 423-7330

13. **Assignments.** This Agreement shall not be assigned by Advertiser nor shall Advertiser grant to any other person any of its rights hereunder without the prior written approval of Pershing, which approval shall be required in connection with (a) any merger, consolidation or reorganization of Advertiser, (b) any sale of all or substantially all of the assets of Advertiser located in Lincoln, Nebraska, or (c) any assignment to a subsidiary or other affiliate of Advertiser.

14. **Entire Agreement.** This Agreement contains all the terms agreed upon by the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, arrangements or communications, whether oral or written, with respect thereto; provided, until the commencement of the term of this Agreement the current agreement entered into between Pershing and Advertiser respecting advertising and the sale of soft drink products at the Auditorium shall continue in full force and effect.

15. **Successors and Assigns.** This Agreement shall be binding and obligatory upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day
and year first written above.

ATTEST:


CITY OF LINCOLN, NEBRASKA,
a municipal corporation, dba
PERSHING MUNICIPAL AUDITORIUM,

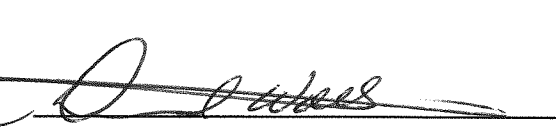
City Clerk

Mayor of Lincoln, NE

WITNESS:

LINPEPCO Partnership, a Nebraska Partnership,

_____
Administrative Assistant

_____
V.P. Sales and Marketing

Addendum to Advertising Agreement between Pershing Auditorium and LINPEPCO.

This addendum shall define "Relevant Products" in section 6, Product Availability; Additional Advertising Rights, on page 4 of the Agreement.

Relevant Products

Pepsi-Cola Brand Products*

Pepsi-Cola
Diet Pepsi-Cola
Caffeine Free Pepsi-Cola
Caffeine Free Diet Pepsi-Cola
Pepsi MAX
Pepsi ONE
Pepsi Throwback
Sierra Mist
Mountain Dew
Diet Mountain Dew
Caffeine Free Diet Mountain Dew
Mountain Dew Throwback
Mountain Dew Code Red
Mountain Dew Live Wire
Wild Cherry Pepsi-Cola
Diet Wild Cherry Pepsi-Cola
Mug Rootbeer
Diet Mug Rootbeer
Crush Orange
Crush Diet Orange
Crush Grape
Crush Strawberry
DOC360
Diet DOC360
Lipton Brisk Lemon Sweet Tea
Brisk Lemonade
Hawaiian Punch

Ocean Spray Products*

Orange Juice 100%
Apple Juice 100%
Cranberry Cocktail
Cranberry Grape
Strawberry Kiwi
Pineapple Peach Mango
Ruby Red Grapefruit

Gatorade Products*

Excluded from the Relevant Products

Water products (non-flavored and flavored)
Frappuccino Coffee Drinks
Tea products (non-flavored and flavored)
Energy Drinks

*Flavors may not be available in some package sizes.


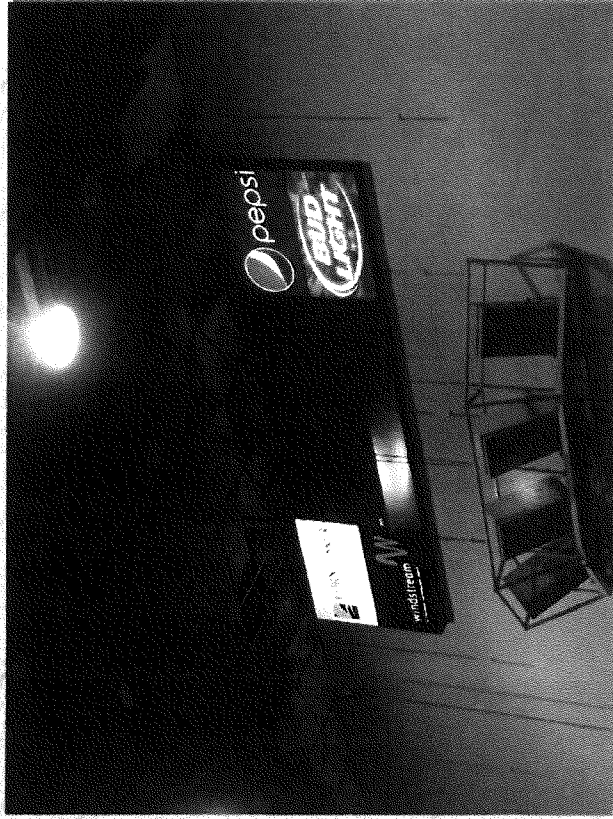

Accepted for LINPEPCO/Date

Exhibit A

Outdoor message system



Exhibit B



Arena message board